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Senate Bill 1048 (as introduced 9-10-14)  
Sponsor: Senator Darwin L. Booher  
Committee: Banking and Financial Institutions

Date Completed: 11-13-14

### **CONTENT**

**The bill would amend the Revised Judicature Act to do the following:**

- Specify that an interest of record under an oil and gas lease or other instrument related to oil and gas exploration or would not be affected by a foreclosure judgment unless the holder of the interest was notified as required by the bill or made a party to the foreclosure action**
- Provide that an interest of record in a non-surface-activity oil and gas lease entered on property described in a foreclosure deed created or recorded after the mortgage lien took effect would have priority over the mortgage.**
- Specify that the grantee named in the deed would be subject to the non-surface-activity oil and gas lease, and would be entitled to royalties provided for in the lease.**

Chapter 31 of the Act pertains to foreclosure of mortgages and land contracts by judicial action. The bill provides that an interest of record under an oil and gas lease or other instrument related to the exploration for or production of oil, gas, or other hydrocarbons from property would not be affected by a judgment entered in an action to foreclose property under Chapter 31, by an act taken as a result of the filing of the action, or by a foreclosure pursuant to the action, unless either of the following occurred: a) a copy of the complaint was sent by certified mail, return receipt requested, to the holder of the interest within 15 days after the action was filed, or b) the holder was made a party to the action and properly served with a summons and a copy of the complaint. These provisions would not apply to an action filed before the bill's effective date.

Chapter 32 of the Act pertains to foreclosure of mortgages that contain a power of sale by advertisement. Chapter 32 requires notice that a mortgage will be foreclosed on by a sale of the property to be posted in a conspicuous place on the property and published at least once a week for four weeks in a newspaper published in the county where the property is located. Under the bill, an interest of record under an oil and gas lease or other instrument related to the exploration for or production of oil, gas, or other hydrocarbons from property would not be affected in any way by the foreclosure of a mortgage of property under Chapter 32 or by any action taken pursuant to that chapter as a result of the foreclosure unless, within 15 days after the first publication of notice, a copy of the notice was sent by certified mail, return receipt requested, to the holder of record of the interest. These provisions would not apply to a foreclosure in which the first notice was published before the bill's effective date.

The bill specifies that an interest of record in a non-surface-activity oil and gas lease of record of property described in a deed executed for property sold on foreclosure under

Chapter 31, or property sold at a foreclosure sale under Chapter 32, that was created or recorded after the lien of the mortgage took effect would have priority over the mortgage, even if created or recorded after the lien of the mortgage took effect. The grantee named in the deed and his or her heirs and assigns would be subject to the lease and would be entitled to all royalties provided for in the lease that accrued to the royalty interest that the mortgagor had by reason of production after the execution of the deed and receipt of notice of the deed by the person responsible for paying the royalty. Notwithstanding anything to the contrary in the lease or any amendment to it, the royalty rate payable to the grantee, and his or her heirs and assigns would be the greater of 1/8 or the rate stated in the lease. "Non-surface-activity oil and gas lease" would mean "an oil and gas lease that does not grant the right to conduct surface operations of any kind on the lands subject to the oil and gas lease". This would include the drilling of a well from the surface, pipeline installation, or the creation of a route for ingress or egress. These provisions would not apply to a mortgage entered into before the bill's effective date.

MCL 600.3130 et al.

Legislative Analyst: Jeff Mann

### **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: John Maxwell

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